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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84818; File No. SR-NYSEArca-2018-75]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Regarding the Listing and Trading of Shares of the PGIM Ultra Short Bond ETF**

December 13, 2018

#### **I. Introduction**

On October 12, 2018, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify the rule governing the listing and trading of shares (“Shares”) of the PGIM Ultra Short Bond ETF (“Fund”). The Commission previously approved the listing and trading of the Shares subject to a representation that the Fund’s investments in OTC derivatives would not exceed 20% of the Fund’s net assets.<sup>3</sup> The Exchange now seeks to permit the Fund to invest up to 50% of its net assets in OTC derivatives under certain circumstances.

The proposed rule change was published for comment in the Federal Register on October 31, 2018.<sup>4</sup> On November 7, 2018, the Exchange filed Amendment No. 1 to the proposed

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 83319 (May 24, 2018), 83 FR 25097 (May 31, 2018) (SR-NYSEArca-2018-15) (“Prior Order”).

<sup>4</sup> See Securities Exchange Act Release No. 84486 (Oct. 25, 2018), 83 FR 54794 (“Notice”).

rule change.<sup>5</sup> The Commission has not received any comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Shares are Managed Fund Shares that do not satisfy all of the criteria for generic listing set forth in Commentary .01 to NYSE Arca Rule 8.600-E. Thus, the Exchange currently lists and trades the Shares pursuant to a rule (“Listing Rule”) approved by Commission.<sup>6</sup> The Listing Rule requires that the Fund’s portfolio meet all requirements of Commentary .01 to NYSE Arca Rule 8.600-E except for those set forth in Commentary .01(a)(1), Commentary .01(b)(4) and Commentary .01(b)(5).<sup>7</sup> Accordingly, the Listing Rule limits the Fund’s investments in OTC derivatives to 20% of the Fund’s assets and, for purposes of calculating this limit, the portfolio’s investment in OTC derivatives is calculated using the aggregate gross notional value of the OTC derivatives.<sup>8</sup>

The Exchange proposes to allow: (1) up to 50% of the Fund’s assets to be invested in OTC derivatives that are used to reduce currency, interest rate, credit, or duration risk arising from the Fund’s investments (“Hedging Derivatives”); and (2) up to 20% of the Fund’s assets to be invested in OTC derivatives other than Hedging Derivatives. For purposes of calculating the

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<sup>5</sup> In Amendment No. 1, the Exchange: (1) corrected its description of the current listing rule applicable to the Shares; (2) clarified the scope of the Fund’s permitted investments in over-the-counter (“OTC”) derivatives; (3) supplemented its arguments in support of the proposed rule change; and (4) made technical changes. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2018-75/srnysearca201875-4628265-176398.pdf>. Amendment No. 1 is not subject to notice and comment because it does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues.

<sup>6</sup> See Prior Order, *supra* note 3.

<sup>7</sup> See *id.*

<sup>8</sup> See Commentary .01(e) to NYSE Arca Rule 8.600-E.

proposed alternative limits, the portfolio's investments in OTC derivatives would be calculated using the aggregate gross notional value of the OTC derivatives.

According to the Exchange, the Fund's adviser and sub-adviser believe that it is important to provide the Fund with additional flexibility to manage risk associated with its investments and, depending on market conditions, it may be necessary for the Fund to utilize additional OTC derivatives for this purpose.<sup>9</sup> Generally, according to the Exchange, OTC derivatives may be customized to a greater degree than exchange-listed derivatives, which may allow the Fund to better hedge its assets and may mitigate trading its costs.<sup>10</sup>

The Exchange also states that the Commission has previously approved an exception from the requirements of Commentary .01(e) relating to investments in OTC derivatives similar to those proposed with respect to the Fund.<sup>11</sup>

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<sup>9</sup> See Notice, supra note 4, 83 FR at 59794.

<sup>10</sup> See id.

<sup>11</sup> See id., 83 FR at 54794, n.10.

### III. Discussion

After careful review, the Commission finds that the Exchange's proposed rule change, as modified by Amendment No. 1, to amend the Listing Rule applicable to the Shares consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> The Exchange proposes to modify only the Listing Rule's limit on OTC derivatives, and the proposed alternative limits are substantially similar to OTC derivatives limits for another issue of Managed Fund Shares that also invests principally in fixed-income securities.<sup>13</sup> The Commission approved a listing rule allowing that fund to similarly invest up to: (1) 50% of its assets in OTC derivatives to reduce currency, interest rate, or credit risk arising from the fund's investments; and (2) 20% of its assets in OTC derivatives other than OTC derivatives used to hedge the fund's portfolio against currency, interest rate, or credit risk.<sup>14</sup>

For the foregoing reason, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with of the Act and the rules and regulations thereunder applicable to a national securities exchange.

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<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> See Securities Exchange Act Release No. 80657 (May 11, 2017), 82 FR 22702 (May 17, 2017) (SR-NYSEArca-2017-09). The Commission also notes that the proposed alternative limits are consistent with derivatives requirements in listing rules for another issue of Managed Fund Shares. See Securities Exchange Act Release No. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR-NASDAQ-2017-128).

<sup>14</sup> See Securities Exchange Act Release No. 80657, supra note 13. The addition of duration risk to the uses of Hedging Derivative in the current proposal does not alter the Commission's analysis.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,<sup>15</sup> that the proposed rule change (SR- NYSEArca-2018-75), as modified by Amendment No. 1 be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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